

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 538 of 1999.

Reserved on: 1.6.2007.

Date of decision: 15.6.2007.

State of H.P.	... Appellant
Versus	
Piar Chand & Ors.	... Respondents

Coram :

The Hon’ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Sanjeev Bhushan, Advocate.

V.K. Ahuja , J.:

This is an appeal filed by the appellant against the judgment of the Court of learned Judicial Magistrate Ist Class, Dharamshala, dated 4.5.1999, vide which the respondents were acquitted of the charge framed against them under Sections, 147,149,294,323 and 506 I.P.C.

Briefly stated the facts of the case are that on 14.3.1995 when the police party was on patrolling duty at Yol Bazaar, a statement was made by Harjinder Singh, complainant, to the police under Section 154 Cr.P.C. He stated that at 4.00 P.M. when he was working in his shop, a jeep came there and 6-7 persons got down from the jeep in a drunken

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes..

state and started obscene acts in presence of the ladies. They remained at the spot for about 10-15 minutes and threat was also given by one of the accused. It was further alleged that one neighbourer shopkeeper, namely Bholu Ram came there who was also beaten by the accused persons and whole market was closed due to the threat. A case was registered and after investigation, the challan was filed before the learned trial Court who tried the respondents under the above sections resulting in their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. Sanjeev Bhushan, Advocate, for respondents and have also gone through the record.

The submissions made by the learned Additional Advocate General were that the evidence led by the prosecution may be pursued which will lead to the conclusion that there has been misreading of evidence by the learned trial Court and as such, the findings are liable to be set aside. On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein.

On a perusal of the evidence, it is clear that the prosecution had examined eight witnesses. The most material witness can be said to be PW-1 Harjinder Singh and PW-2 Bholu Ram, one of the injured. PW-1 Harjinder Singh has stated that 5-6 persons came under the influence of liquor and started giving abuses and when he prevented them, one of the accused took out an empty bottle and tried to hit him. He stated that his wife Mohinder Kaur came there who also tried to stop the accused who gave abuses and his neighbourer Bholu Ram came there who was beaten by the accused persons and also gave abuses to him. He stated that he was not knowing the names of the

accused persons at the spot and he learnt the names subsequently and had told the police. He admitted that several customers were present in his shop, but has not mentioned the names of those persons since he was not knowing them. He stated that he was knowing the name of PW-2 Bhola Ram, who is the injured and due to the act of the accused persons, the market was closed. PW-2 Bhola Ram stated about the name of accused Piar Chand only who was under the influence of liquor and has stated that he was knowing Piar Chand only and no other accused persons and Piar Chand gave abuses and some persons came there from the backside and gave him beatings, but he is not clear as to who gave him beatings. He was declared as hostile. The wife of the complainant was examined as PW-3 Mohinder Kaur, who stated about the presence of two of the accused only and one Suresh who came there giving abuses. She stated that they gave abuses since they were under the influence of liquor and did not state about the beatings given to PW-2. The statements of other witnesses are not material.

The learned trial Court had also referred to the question as to why the report was not immediately lodged when the market had closed due to the act of the respondents. A perusal of the evidence led by the prosecution shows that it is not such a case that it could be relied upon beyond any reasonable doubt so as to hold the accused persons guilty of the charge framed against them since the identity of the accused persons was also not established on the basis of the evidence led before the learned trial Court. The learned trial Court had come to a right conclusion that the evidence is not sufficient to hold the respondents guilty of the charge framed against them and accordingly, those findings cannot be said to be perverse calling for an interference by this Court.

There is no merit in the appeal filed by the appellant, which is dismissed accordingly. The bail bonds of the accused persons stand discharged forthwith. A copy of the judgment alongwith record be sent to the Court concerned.

**June 15, 2007
(BSS)**

**(V.K. Ahuja),
Judge**